

Cote, D.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIESEL EBOOKS, LLC,

Plaintiff,

v.

APPLE INC.; HACHETTE BOOK GROUP, INC.; HARPERCOLLINS PUBLISHERS, L.L.C.; VERLAGSGRUPPE GEORG VON HOLTZBRINCK GMBH; HOLTZBRINCK PUBLISHERS, LLC d/b/a MACMILLAN; THE PENGUIN GROUP, A DIVISION OF PEARSON PLC.; and SIMON & SCHUSTER, INC.

Defendants.

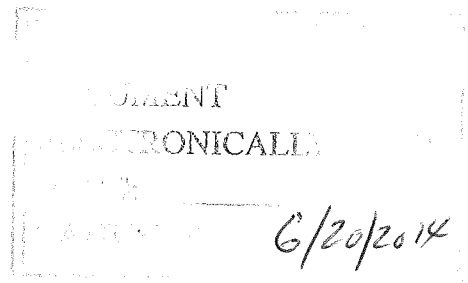
ABBAY HOUSE MEDIA, INC. d/b/a
BOOKSONBOARD,

Plaintiff,

v.

APPLE INC.; HACHETTE BOOK GROUP, INC.; HARPERCOLLINS PUBLISHERS, L.L.C.; VERLAGSGRUPPE GEORG VON HOLTZBRINCK GMBH; HOLTZBRINCK PUBLISHERS, LLC d/b/a MACMILLAN; THE PENGUIN GROUP, A DIVISION OF PEARSON PLC.; and SIMON & SCHUSTER, INC.

Defendants.



CASE NO.: 14-CV-1768 (DLC)

CASE NO.: 14-CV-2000 (DLC)

STIPULATION AND ORDER

WHEREAS, on June 5, 2014, the Court ordered that the parties discuss whether they should enter into a stipulation providing that the Court's ruling on Defendants' motions to dismiss in the case of *DNAML Pty, Ltd. v. Apple Inc. et al*, No. 13-cv-6516 (DLC) would apply in the two above-captioned related cases. (Dkt. 49, 43.)

NOW, THEREFORE, the parties, by and through their counsel of record, stipulate and agree that:

1. The Court's June 5, 2014 ruling in the *DNAML* action would result in the grant of any motion to dismiss in the above-captioned cases as to claims arising from Apple's App Store Policies. Plaintiffs agree to dismiss any such claims with prejudice. The Court's June 5, 2014 ruling in the *DNAML* action also dismissed "any claims arising from . . . foreign sales of e-books." Defendants rely on the language of the ruling as written. Plaintiffs read the ruling as stating that *DNAML* agreed that sales made by it from its base in Australia to customers in other foreign countries were not within the reach of the Sherman Act. As so construed, Plaintiffs agree to be bound by the ruling and will dismiss with prejudice any claims arising from similar sales. Plaintiffs reserve the right to argue that claims arising from sales between the United States and foreign countries, if any, are not barred by the Court's June 5, 2014 ruling in the *DNAML* action.

2. The Court's June 5, 2014 ruling in the *DNAML* action would result in the denial of any motion to dismiss in the above-captioned cases to the extent such a motion challenges Plaintiffs' antitrust standing.

3. This stipulation is not to be deemed an admission by any party that it agrees with or adopts the June 5, 2014 opinion in the *DNAML* action.

4. This stipulation is entered into without prejudice to any party's right to appeal any issue decided by the Court in the June 5, 2014 opinion in the *DNAML* action as well as any issue decided by the Court in the above-captioned cases.

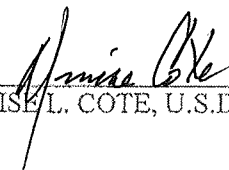
5. This stipulation is entered into without prejudice to any party's right to file a motion for reconsideration of the June 5, 2014 opinion the *DNAML* action.

6. This stipulation is entered into without prejudice to any party's right to file any subsequent dispositive motion in the *DNAML* action and the above-captioned cases.

7. Scanned signatures, digital signatures, or signatures received by facsimile shall be treated the same as original for the stipulation and any written, agreed modification thereof.

DATED: June 20, 2014

SO ORDERED:


HON. DENISE L. COTE, U.S.D.J. xmc

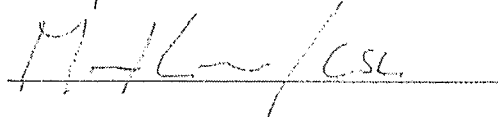


Maxwell M. Blecher
Jordan L. Ludwig
BLECHER COLLINS PEPPERMAN &
JOYE, P.C.
515 S. Figueroa St., Suite 1750
Los Angeles, California 90071
Tel.: (213) 622-4222
Fax: (213) 622-1656
Email: mblecher@blechercollins.com
jludwig@blechercollins.com

Lead Counsel for Plaintiffs

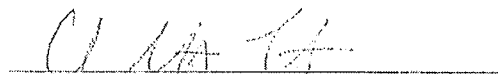
Eric M. Creizman
CREIZMAN PLLC
565 Fifth Avenue, Fl. 7
New York, NY 10017
Tel.: (212) 972-0200
Fax: (646) 200-5022
Email: ecreiz@creizmanllc.com

Local Counsel for Plaintiffs



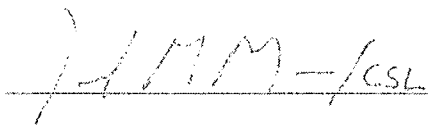
Michael Lacovara
Samuel J. Rubin
FRESHFIELDS BRUCKHAUS
DERINGER US LLP
601 Lexington Avenue, 31st Floor
New York, New York
Tel.: (212) 277-4000
Fax: (212) 277-4001
Email: michael.lacovara@freshfields.com
samuel.rubin@freshfields.com

*Counsel for Defendant Hachette Book
Group, Inc.*



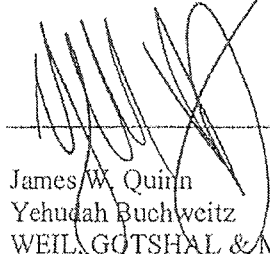
C. Scott Lent
ARNOLD & PORTER LLP
399 Park Avenue
New York, New York 10022-4690
Tel.: (212) 715-1784
Fax: (212) 715-1399
Email: Scott.Lent@aporter.com

*Counsel for Defendant HarperCollins
Publishers LLC*



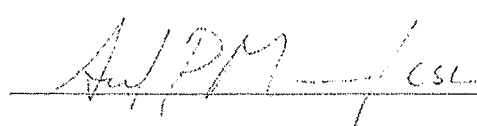
Joel M. Mitnick
John J. Lavelle
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
Tel.: (212) 839-5300
Fax: (212) 839-5599
Email: jmitnick@sidley.com
jlavelle@sidley.com

*Counsel for Defendant Holtzbrinck
Publishers, LLC d/b/a Macmillan and
Verlagsgruppe Georg von Holtzbrinck GmbH.*



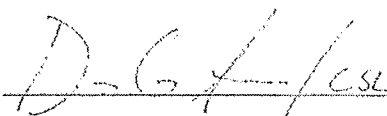
James W. Quinn
Yehudah Buchweitz
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153-0119
Tel.: (212) 310-8000
Fax: (212) 310-8007
Email: james.quinn@weil.com
yehudah.buchweitz@weil.com

Counsel for Defendant Simon & Schuster, Inc.



Saul P. Morgenstern
Amanda C. Croushore
KAYE SCHOLER LLP
425 Park Avenue
New York, New York 10022
Tel.: (212) 836.7210
Fax: (212) 836-6333
Email: Saul.Morgenstern@kayescholer.com
Amanda.Croushore@kayescholer.com

*Counsel for Defendant The Penguin Group, a
Division of Pearson PLC*



Theodore J. Boutrous, Jr.
Daniel G. Swanson
GIBSON, DUNN & CRUTCHER, LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000
tboutrous@gibsondunn.com

Lawrence J. Zweifach
GIBSON, DUNN & CRUTCHER, LLP
200 Park Avenue
New York, NY 10166-0193
(212) 351-4000

Cynthia Richman
GIBSON, DUNN & CRUTCHER, LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 955-8500

On behalf of Defendant Apple Inc.